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OFFICE OF PETITIONS

In re Application of	:
David Chen, et. al.	:
Application No. 09/872,146	: DECISION ON PETITION
Filed: May 31, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 5043P012	:

This is a decision on the petition, filed May 27, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

The instant nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on May 22, 2002. A review of the file record discloses that a Notice to Rescind was received in the USPTO on May 30, 2002.

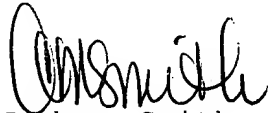
Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at <http://www.uspto.gov/web/patents/patog/week26/>.

In the instant application, and as noted above, since the notice of foreign filing was received within 45 days of the filing date of the counterpart application as required by 35 U.S.C. § 122(b)(2)(B)(iii), this application is not regarded as abandoned.

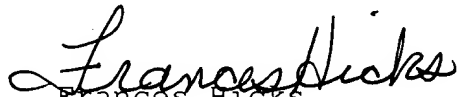
Since the application is not in fact abandoned, for the reason stated above, the petition fee of \$1,300 is being credited to Deposit Account No. 02-2666 as authorized.

This application is being forwarded to Technology Center 2600 for examination in due course.

Any inquiries concerning this decision may be directed to Andrea Smith at (703) 308-6711.



Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



Frances Hicks
Lead Petitions Examiner